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Reports

LEE LEE CHENG (f) v. SEOW PENG KWANG

[C. A. (Thomson C.J., Rigby and Hepworth JJ.) May 26, 1959]

[Ipoh — F.M. Civil Appeal No. 54 of 1958]

Limitation — Fatal accident — Civil Law Ordinance, 1956, s.8(3)(b) — Construction of — Courts Ordinance, 1948, s.47 and 2nd Schedule, Pt. A, Item 12 — Jurisdiction of Court to extend time.

Interpretation — Different words used in statute — Construction.

This was an appeal against the decision of Syed Sheh Barakbah J. reported in [1958] M.L.J. 271. The Court of Appeal in dismissing the appeal held that the period prescribed by section 8(3)(b) of the Civil Law Ordinance, 1956 was a period of limitation and that Item 12 of Part A of the Second Schedule of the Courts Ordinance, 1948 was merely declaratory of the jurisdiction of the High Court to enlarge the time prescribed by any written law for doing any act or taking any proceeding, always providing there was express provision in the particular written law itself which enabled such time to be so enlarged.

Observations on "Constitution, Powers and Procedure of the Supreme Court," and on "Jurisdiction and Power" of the Supreme Court.

Cases referred to:—

(1) *Manby* v. *Bewicke* 3 K. & J. 342, 352.

(2) *Washer* v. *Elliott* 1 C.P.D. 169, 174.

(3) *Maqbul Ahmad* v. *Onkar Pratap Narain Singh* I.L.R. 57 All. 242, 247, 350; A.I.R. 1935 P.C. 85.

COURT OF APPEAL.

Denis Murphy for the appellant.

W. J. Huntsman for the respondent.

Cur. Adv. Vult.

Thomson C.J.: The appellant in this appeal is the administratrix of the estate of one Gooi Kim Kwan who was killed in a motor accident near Sungei Siput on 21st March, 1956. The respondent is the administrator of the estate of one Loke Ta Poh who was killed in the same accident.

Gooi was a passenger in a motor-car which was being driven by Loke when it came into collision with a motor lorry and as a result of the collision both men were killed.

It was alleged by the appellant that the accident was entirely due to the negligence of Loke and she accordingly sued for damages under the provisions of the Civil Law Ordinance, 1956. By reason of section 8 of the Ordinance the proceedings were brought against the administrator of Loke's estate.

Letters of Administration to Loke's estate, although granted to the respondent on 4th November, 1956, were not extracted until 8th August, 1957, and the appellant's plaint was not filed until 17th February, 1958. These proceedings were accordingly taken after the expiration of the period of six months prescribed by section 8(3)(b) of the Civil Law Ordinance which reads as follows:—

"No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless proceedings against him in respect of that cause of action.....

.....

(b) are taken not later than six months after his personal representative took out representation."

In his defence the respondent in addition to denying negligence pleaded that the action was barred by the provision of the Civil Law Ordinance which has been quoted, and in the event he took out a summons to have the point decided as a preliminary point under Order 45 rule 2. At the same time the appellant applied to the Court for an order that the time prescribed by the section be enlarged. Both applications came on for hearing before Mr. Justice Barakbah who held that the Court had no power to enlarge the period of time prescribed by the Ordinance and held that the appellant's alleged cause of action was barred by it.

Against that decision the appellant has now appealed.

The terms of section 8(3)(b) of the Civil Law Ordinance are clear. The section states that no proceedings of the present nature against the estate of a deceased person shall be maintainable unless they are taken not later than six months after the personal representative takes out administration. The Ordinance itself contains no provision of any sort giving the Court power to extend that period.

The case for the appellant, however, was based on section 47 of the Courts Ordinance which reads as follows:—

"The original civil jurisdiction of the High Court shall be as set out in the Second Schedule hereto."

and item 12 of the Second Schedule which reads as follows:—

"Jurisdiction to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed."

It was argued that these provisions give the High Court power to enlarge or abridge any period of time prescribed by any written law for doing any act or taking any proceedings and in particular that they give the Court power to extend the period prescribed by the Civil Law Ordinance. It is, incidentally, a somewhat curious corollary to this argument that the Court has equally the power to abridge that time and so debar from his remedy a plaintiff who has commenced proceedings in this Court within the statutory period of six months.

The learned trial Judge stated his opinion on the point in the following words:—

"Item 12, in my opinion, merely sets out the jurisdiction of the High Court, namely, the scope of authority to deal with certain matters expressly provided for by the law, and the Court could enlarge the time only where there was express provision in the law to that effect, ... In my view, item 12 does not give general power of enlargement to the Court."

Before stating my own views on the question in issue I would observe that it is extremely surprising that the point has not been raised previously during the ten years or so that the Courts Ordinance has been in force. Moreover if the appellant's contention is correct it will have extremely far-reaching and, in my opinion, calamitous consequences. The period prescribed by section 8(3)(b) of the Civil Law Ordinance is a period of limitation. If the Court has power to extend it then it has power to extend any other period of limitation and it would thus be open to every litigant with a statute-barred grievance to come to the Court and attempt to have the statutory bar removed so that he could be heard. The principle of limitation is a very ancient one (see 3 Black. Com. 185) and the object of modern statutes of limitation has been thus described by Wood, Vice-Chancellor, in the case of *Manby* v. *Bewicke*[1]:—

"The legislature has, in this as in every civilised country that has ever existed, thought fit to prescribe certain limitations of time after which persons may suppose themselves to be in peaceable possession of their property, and capable of transmitting the estates of which they are in possession, without any apprehension of the title being impugned by litigation in respect of transactions which occurred at a distant period, when evidence in support of their own title may be most difficult to obtain."

There is, of course, no reason why the legislature should not detract from the certainty which the subject thus enjoys by giving the Courts power to enlarge the periods of limitation prescribed by statute but one would expect any statute which had this object to express it with very great clearness and particularity. As was said by Archibald J., in the case of *Washer* v. *Elliott*[2]:—

"It is not reasonable to expect that such a change would be made without particular and precise enactments regulating the exercise of a power so extensive and exceptional, or that it would be left to be implied from mere general words the purpose and object of which may be answered by attributing to them a natural but more limited meaning."

Having made these observations I now proceed to an examination of the relevant provisions of the Courts Ordinance, 1948.

It is not necessary to consider here the complicated and indeed confused history of the Courts in the various political units that ultimately went to make up the Federation of Malaya.

The first Supreme Court for the Federation was established by Clause 77 of the Federation of Malaya Agreement, 1948, which provides:—

"There shall be in and for the Federation a Court of unlimited civil and criminal jurisdiction to be called the Supreme Court of the Federation of Malaya.

The Supreme Court shall be a Court of Record and shall consist of a High Court and a Court of Appeal."

The Clause goes on to provide that the "Constitution, Powers and Procedure of the Supreme Court" shall be prescribed by Federal Ordinance.

By Article 121 of the Constitution, which came into effect on 31st August, 1957, "The Judicial Power of the Federation shall be vested in a Supreme Court and such inferior Courts as may be provided by Federal Law". By Article 172 this Supreme Court is the Supreme Court in existence immediately before Merdeka Day, that is the Court established by the Federation Agreement of 1948. By Article 128(1) the Supreme Court is to have such original, appellate and revisional jurisdiction as may be provided by Federal Law.

The Federation Agreement came into operation on 1st February, 1948, and for a period of 11 months the constitution, powers and procedure of the Supreme Court were regulated by the Malayan Union Courts Ordinance of 1946, the Courts Enactment of the Federated Malay States, the Courts Ordinance of the Straits Settlements and the Courts Enactments of Johore, Kedah, Kelantan, Perlis and Trengganu. The interpretation of this legislative syndrome might well have presented a formidable task. Fortunately, however, it did not give rise to litigation and it is unnecessary to consider it now for all the Enactments in question is so far as they apply to the Federation or portions of it were repealed and replaced by the Courts Ordinance, 1948, which came into operation on 1st January, 1949.

That Ordinance is entitled "an Ordinance to amend and consolidate the Law relating to the constitution and powers of the Civil and Criminal Courts" and deals not only with the Supreme Court but with the Subordinate Courts. Here it is only necessary to consider its provisions in so far as they relate to the Supreme Court.

Part III (sections 6 to 12) deals with the actual constitution of the Supreme Court. Part IV (sections 13 to 42) deals with the Court of Appeal. It provides for its constitution (section 13), for its jurisdiction (section 14) and then goes on to deal (sections 16 to 42) with its powers.

Part V (sections 43 to 58) deals with the High Court and calls for more detailed consideration here. Sections 43 to 45 deal with its consti-

tution and sittings. Sections 46 and 47 deal with its original jurisdiction. Section 46 provides that:—

"The original criminal jurisdiction of the High Court shall be as set out in the First Schedule hereto."

and then somewhat significantly goes on to provide:—

"The High Court may pass any sentence allowed by law."

Section 47 deals with the original civil jurisdiction and provides:—

"The original civil jurisdiction of the High Court shall be as set out in the Second Schedule hereto."

Sections 48 to 51 set out the appellate jurisdiction of the High Court, then its jurisdiction to hear appeals from Subordinate Courts and sections 52 to section 58 set out its powers of dealing by way of revision with the proceedings of Subordinate Courts.

The only other section of the Ordinance which is relevant here is section 99A which was added in 1951 and which reads as follows:—

"In amplification and not in derogation of the powers conferred by this Ordinance or inherent in any Court, and without prejudice to the generality of any such powers, the Supreme Court and every Sessions Court and Magistrates' Court shall have the further powers and jurisdiction set out in the Third Schedule to this Ordinance."

Throughout there is a distinction in wording between "jurisdiction" and "power" and turning to the Second Schedule and the Third Schedule the same vital distinction of wording is to be observed. The Second Schedule is headed "Original Civil Jurisdiction of the High Court" and every item in it, including item 12 with which we are here concerned, commences with the word "Jurisdiction". Item 1 is "Jurisdiction and authority" of a like nature and extent as are exercised by the Chancery and King's Bench Divisions of the High Court of Justice in England. Item 2 is "Jurisdiction" under any written law relating to matrimonial causes. And so forth.

The Third Schedule, on the other hand, is headed "Additional powers of the Courts" and except in Items 22 and 26, which only relate to Subordinate Courts, and item 25, which only relates to the appellate jurisdiction of the High Court, the word "jurisdiction" does not occur anywhere in it. Each item, on the other hand, apart from those mentioned, begins with the words "A Court may".

It is axiomatic that when different words are used in a statute they refer to different things and this is particularly so where the different words are, as here, used repeatedly. This leads to the view that in the Ordinance there is a distinction between the jurisdiction of a Court and its powers, and this suggests that the word "jurisdiction" is used to denote the types of subject matter which the Court may deal with and in relation to which it may exercise its powers. It cannot exercise its powers in matters over which, by reason of their nature or by reason of extra-territoriality, it has no jurisdiction. On the other hand, in dealing with matters over which it has jurisdiction, it cannot exceed its powers.

The same distinction between jurisdiction and powers is to be observed in section 46 which deals with criminal matters. The first sub-section sets out by reference to the First Schedule to the Ordinance, which is of the same sort of structure as the Second Schedule, the original criminal jurisdiction of the Court whereas it is the second sub-section which gives it the power when exercising that jurisdiction to pass any sentence allowed by law.

It is to be observed in passing that a similar distinction is to be found in the Judicature Act, 1925 (and was to be found in the Act of 1873). Certain sections (e.g. 18, 20 and 21) relate in terms to the jurisdiction of the High Court. Others (e.g. 39 and 46) provide that the Court "shall have power".

The view that in the Ordinance jurisdiction is not synonymous with powers gains strength when the Ordinance is considered in the light of the 1948 Agreement.

Clause 77 of the Agreement provides that the Supreme Court shall be a Court of unlimited jurisdiction, that it shall consist of a High Court and a Court of Appeal and that its constitution, powers and procedure may be prescribed by Federal Ordinance. Clearly here "jurisdiction" must mean something different from "power". Jurisdiction is unlimited. But unlimited jurisdiction cannot mean unlimited power because as regards the powers of the Court it is provided that these may be prescribed by Federal Ordinance and in the nature of things something which is unlimited cannot be capable of being prescribed. This leads to the conclusion that the expression "jurisdiction" is used as meaning the authority of the Court to exercise any judicial power that is given to it by the law and that when the Clause says that jurisdiction is unlimited it means that there is authority to exercise such judicial power as is given by law in any type of matter whatsoever in which the law authorises or requires judicial power to be exercised.

As regards constitution the Clause provides that the Supreme Court shall consist of a High Court and a Court of Appeal consisting of Judges as provided for by the Agreement. Beyond that however, the constitution of the Court is like its powers left to be prescribed by Federal Ordinance. In particular the Agreement itself makes no provision for the distribution of jurisdiction between the two constituent parts of the Court and therefore so much of its constitution as affects that distribution is a question of constitution which is left to be dealt with by the Legislature.

It is in the light of these considerations that the Courts Ordinance has to be considered. It gives the Supreme Court certain powers. These powers are not of course the sum total of the powers of the Court for other powers are given

to it by a large number of other Federal Ordinances. It deals with the constitution of the Court and in particular it deals with the distribution of jurisdiction between its two constituent parts, the Court of Appeal and the High Court, although it does not give the Supreme Court considered as a whole any jurisdiction which it does not possess by virtue of the Agreement and indeed it could not do so because by the terms of the Agreement itself the sum total of the jurisdiction is unlimited.

On this view the effect of section 47 together with the Seventh Schedule is abundantly clear. It does not give the High Court any power that it does not otherwise possess for it talks of jurisdiction and not of power. Nor does it create any new jurisdiction in the High Court. In my view it does nothing more than set out what portion of the sum total of the jurisdiction of the Supreme Court is to be exercised originally by the High Court, that is to say, by the High Court as a Court of first instance.

To deal more particularly with item 12 of the Second Schedule with which we are concerned in the present appeal, it thus seems clear that the effect is to provide that where any law contains a provision empowering the Supreme Court to enlarge a period of time it is the High Court that, in the absence of anything to the contrary, has the original jurisdiction to adjudicate upon any application to exercise such power. Barakbah J., has given examples of such powers under the Land Acquisition Enactment and the Japanese Judgments and Civil Proceedings Ordinance. With respect perhaps a better example may be found in section 172 of the Land Code. That section provides that "the Court", which by section 2 means the Supreme Court, may in certain circumstances extend the time prescribed by section 171 for objecting to the removal of a caveat and section 47 and item 12 of the Second Schedule make it clear that in the first instance it is the High Court that has jurisdiction to exercise that power.

As has been said the Civil Law Ordinance gives no power to the Court to extend the period of six months prescribed by section 8(3)(b) of that Ordinance. And I know of no such power given by any other law.

I would therefore dismiss the present appeal with costs.

Rigby J.: In my view the judgment of Barakbah, J. was entirely correct in holding that item 12 in the Second Schedule of the Courts Ordinance, 1948, is merely declaratory of the jurisdiction of the High Court to enlarge the time prescribed by any written law for doing any act or taking any proceeding, always providing there is express provision in the particular written law itself which enables such time to be so enlarged. Any other construction of the Section would, in my view, simply nullify the purpose and effect of the law relating to the limitation of actions.

I have had the advantage of reading the judgment of Hepworth, J., with which I agree and to which I have nothing to add.

I would dismiss this appeal with costs both here and in the Court below.

Hepworth J.: The Plaintiff was the Administratrix of the Estate of Gooi Kim Kwan deceased, and the Defendant was the Administrator of the Estate of Loke Ta Poh deceased, both of whom were killed in the same motor accident. The plaintiff's claim was for damages on the ground that the accident was caused through the negligence of the said deceased Loke Ta Poh. In these circumstances the provisions of sub-section (3)(b) of section 8 of the Civil Law Ordinance, 1956, are relevant and read as follows:—

"8 .....

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless proceedings against him in respect of that cause of action either—

(a) .....

(b) are taken not later than six months after his personal representative took out representation."

In the circumstances of this case therefore it was necessary for proceedings against the Estate of Loke Ta Poh deceased to be taken not later than six months after his personal representative had taken out representation. It was common ground that, as a result, the last date for taking proceedings was the 7th February, 1958, and that the date on which the plaint was filed was the 15th February, 1958.

The plaint was admitted and a Statement of Defence was filed, and in paragraph 6(c) of the defence it was specifically pleaded that "in any event the plaintiff's action was not commenced before the expiration of six months from the date on which the defendant took out representation to the Estate of Loke Ta Poh, deceased, and the plaintiff's alleged cause of action is barred by the provisions of section 8(3)(b) of the Civil Law Ordinance, 1956".

On the 29th July, 1958, the defendant filed an application by way of Summons in Chambers for an order that the point of law raised by him in paragraph 6(c) of his defence be set down for hearing and disposed of before the trial, and on the 9th September, 1958, the plaintiff by Notice of Motion applied for an order that the time prescribed by section 8(3)(b) of the Civil Law Ordinance, 1956, be enlarged so as to validate the proceedings in the above action, or, alternatively to enable new proceedings to be instituted in respect of the causes of action in which these proceedings had been instituted.

The Summons and the Motion were dealt with together. It was maintained on behalf of the plaintiff that by virtue of the provisions of section 47 and Item 12 of the Second Schedule of the Courts Ordinance, 1948, the Court had power to enlarge the time limited by section 8(3)(b) of the Civil Law Ordinance, 1956. On

behalf of the defendant it was submitted that the provisions of Item 12 of the Second Schedule were merely declaratory, declaring the Court's power to extend time where there was express statutory provision so to do. The learned Judge agreed with the defendant's view and dismissed the plaintiff's application to enlarge time, with costs.

I have had the advantage of reading the judgment of the President of the Court with which I respectfully agree, but as this is a question of importance I would like in addition to express my views on the subject in my own way.

The provisions of section 8(3)(b) of the Civil Law Ordinance, 1956, are, I think, analogous to the provisions of the Limitation Ordinance, 1953. This application for extension of time could not therefore be regarded as an application for extension of time for the carrying out of some procedural requirement in the sense that an application can be made for an extension of the time limited by O. 8 r. 1 under O. 64 r. 7. Indeed it was Mr. Murphy's contention that the Second Schedule of the Courts Ordinance, 1948, gave the Court complete power in its discretion to enlarge time, and the considerations which weigh with a Court when considering whether or not to enlarge the time limited under O. 8 r. 1 were wholly inapplicable.

When considering the defendant's submission that the Second Schedule of the Courts Ordinance, 1948, is merely declaratory, I think it may be of use to consider observations which have been made with regard to the provisions of section 151 of the Indian Civil Procedure Code which reads:—

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

Rustomji tells us (The Law of Limitation, 5th Edn., Vol. I, p. 26) that if the period of limitation for an application has run out, the bar of time cannot, as a rule, be got over by treating the application as one for the exercise of the inherent powers of the Court under section 151. The Court must exercise its inherent powers cautiously and with circumspection, and the section should never be invoked so as in effect to nullify the express provisions of the Limitation Act. As pointed out by the Privy Council (*Maqbul Ahmad* v. *Onkar Pratap Narain Singh* [3]) there is no general judicial jurisdiction, outside the Limitation Act, enabling a Court to relieve a suitor from the provisions of the Act on the ground of hardship, and a Court cannot override the provisions of the Limitation Act on equitable considerations.

Sir Dinshah Mulla observes on the subject of section 151 of the Indian Civil Procedure Code (The Code of Civil Procedure, 10th Edn., p. 433) that the Code of Civil Procedure is not exhaustive. The Court has therefore in many cases, where the circumstances require it, acted upon the assumption of the possession of an inherent power to act *ex debito justitiae* and to do that real and substantial justice for the administration of which alone it exists. The law cannot make express provisions against all inconveniences so that their dispositions shall express all the cases that may possibly happen, and it is therefore the duty of a Judge to apply them not only to what appears to be regulated by their express provisions, but to all the cases to which a just application of them may be made and which appear to be comprehended either within the express sense of the law or within the consequences that may be gathered from it. This section does not confer any powers but only indicates that there is a power to make such orders as may be necessary for the ends of justice and to prevent an abuse of the process of the Court. At the same time it is to be remembered that a Court has no inherent power to do that which is prohibited by the Code. Further, this section does not invest the Court with jurisdiction over matters which are excluded from its cognizance. Nor can the Court ignore the provisions of the law of limitation by appealing to this section

When Sir Dinshah Mulla states that the section does not confer powers but only indicates that there is a power to make such orders as may be necessary for the ends of justice, he is in effect saying much the same thing as the defendant when the defendant submits that the Second Schedule of the Courts Ordinance, 1948, is only declaratory that is that it does not confer any powers but only indicates that there is a power to make such order as may be necessary when power so to do is provided by some statutory provision such as the Limitation Ordinance.

It is also necessary to consider the meaning of the word "jurisdiction" in section 47 of the Courts Ordinance, 1948, and the Second Schedule thereto. Every paragraph of the Second Schedule, except one, begins with the word "jurisdiction" and the word also appears in the heading to that part of the Courts Ordinance in which section 47 appears. Strouds Judicial Dictionary, 3rd Edn., Vol. 2, at page 1544, states that the word "jurisdiction" can have two meanings, in one sense meaning "conferring power" and in the other meaning "an area or district". In my view a combination of these is the meaning of the word as used in the Second Schedule, that is that it means the conferring of power to take cognizance of the laws in force in an area or district. If this is taken as its correct meaning then the Second Schedule can be said to confer power on the Court to apply the laws as to limitation in the manner prescribed including power to extend time where specific provision for so doing is made.

It will be remembered that although the Court has power to renew a writ for a period in excess of 12 months under O. 64 r. 7, the practice is not to do so after the expiration of 12 months from the date of the writ or of 6 months from the date of the last renewal, where, but for such

enlargement of time, the plaintiff's claim would be barred. Mr. Murphy argued that considerations such as this were wholly inapplicable by virtue of the provisions of the Second Schedule of the Courts Ordinance, 1948. He does not as I understand it, argue that the Court has no discretion in the matter. If the Court has a discretion and Mr. Murphy is right then what considerations should weigh with the Court in exercising that discretion ?

I cannot think that the intention and effect of the Second Schedule, any more than that of section 151 of the Indian Civil Procedure Code, is to give the Court power to make an order directly negativing a statutory provision. It seems to me that if the Second Schedule does confer any powers then the exercise of such powers does not extend to making orders in direct contradiction of the provisions of other statutes. It seems to me that if the word "jurisdiction" in the Second Schedule is interpreted as meaning "the conferring of power to take cognisance of the laws in force in an area or district" the meaning of the Second Schedule is clear and no difficulties arise.

That being the case I agree with the Order of the learned Judge and would dismiss this Appeal with costs here and in the Court below.

Appeal dismissed.

Solicitors: *Murphy, Dunbar & Chung*; *Maxwell, Kenion, Cowdy & Jones.*

PUBLIC PROSECUTOR v. PHANG SWEE LAN

[A. Cr. J. (Adams J.) November 5, 1959]

[K. L. — Criminal Appeal No. 58 of 1959]

Local Authority — Building operations by unlawful occupier of state land without approval of Municipal Councillors — Demolition notice on whom to be served — Municipal Ordinance (S.S.Cap.133), Part VIII, ss.143, 144 (1), (7), (10), (12) and 144(B) — Construction of s.144(12): "they shall be deemed to have been commenced ...by the owner of the land" — Intention of legislature.

In this case the respondent had erected a wooden house on State land within the Municipality of Kuala Lumpur which she occupied unlawfully, and the house was built without the approval of the Municipal Councillors. A demolition notice was served on her requiring her to demolish the building or to submit appropriate plans but she failed to comply therewith. A summons was issued against her and when the matter came before the Magistrate she was acquitted and the Magistrate refused to make any mandatory order, following *Lim Beng Teck* v. *R.* (1). The Prosecution appealed.

Held: though the words of section 144(12) are unequivocal, it does not mean that the owner of the land was necessarily in fact the person who commenced the building operations. It is "a statutory fiction" and what the Legislature meant was that the owner of the land should be made responsible where building operations have been commenced contrary to the provisions of section 144(7), but the Legislature did not mean to make him solely responsible and to prevent the action being taken against the actual offender when the proper authorities know who he is.

Lim Beng Teck v. *R.* (1) dissented from.

Cases referred to:—

(1) *Lim Beng Teck* v. *R.* [1957] M.L.J. 21.
(2) *Warburton* v. *Loveland* (1831), 2 D. & Cl. 489.
(3) *Ex parte Walton* (1881), 17 Ch.D. 746.
(4) *Hooi Chuk Kwong* v. *Lim Sow Choo* [1958] M.L.J. 5.
(5) *Thong Peng Hong* v. *Public Prosecutor* [1955] M.L.J. 232.

MAGISTRATE'S CRIMINAL APPEAL.

Peter Hall (on a *fiat* from the Public Prosecutor) for the appellant.

G. K. M. Mohan for the respondent.

Cur. Adv. Vult.

Adams J.: This is an appeal by the Public Prosecutor against the order of the learned Magistrate, Kuala Lumpur, dismissing the summons brought against the respondent under section 144 of the Municipal Ordinance of the Straits Settlements as applied to the Malay States by virtue of the Municipal (Extended Application) Ordinance (No. 3 of 1948). I shall hereinafter refer to the Municipal Ordinance of the Straits Settlements as "The Ordinance".

The facts of the case are not in dispute. Some time during September, 1958 the respondent erected a wooden house 21 ft. x 20 ft. on a piece of land within the boundaries of the Municipality of Kuala Lumpur. The owner of this piece of land is the State Government and the respondent is on the land unlawfully without licence or title from the State Government. The respondent at no time gave the Municipal Councillors notice of her intention to commence building operations nor did she submit any plan and specification of the building to the Municipal Councillors, who, therefore, were unable to approve any plan in accordance with the provisions of section 144(7) of the Ordinance. A notice was served upon the respondent who was the owner of the premises within the meaning of section 3 of the Ordinance on the 9th July, 1959. This notice required her to demolish the building or to submit appropriate plans within 14 days, on pain of legal proceedings being taken against her if she failed to comply therewith. The respondent acknowledged receipt of the notice to the Notice Server but failed to comply with it. The Municipal authorities then proceeded to apply for a summons in the Magistrate's Court under section 144(10) which makes any person contravening sub-section 7 liable, *inter alia*, to a fine of $500. The Court is also given power thereby to make a mandatory order requiring such person to alter in any way or to demolish the building. The summons was duly issued and the matter came up for trial. The Magistrate acquitted the respondent on the 16th July, 1959 and refused to make any mandatory order. The learned Magistrate in a very careful judgment decided that he should follow the judgment of Whyatt C.J. in *Lim Beng Teck* v. *Reg.*(1) which is precisely on the main ground of appeal in this case. He also refused to accept the argument put forward by the Prosecutor that sub-section 12 of section 144 in any event only